



STAFF REPORT

Date: June 2, 2009

File No.: DE/04-1-I

To: Denman Island Local Trust Committee

From: Courtney Campbell, Island Planner

CC: Chris Jackson, Acting Regional Planning Manager

Re: Local Trust Committee Sponsored Rezoning Applications of Historic Co-operatives

1. BACKGROUND:

The Denman Island Local Trust Committee (LTC) has identified the sponsorship of rezoning applications for historic co-operatives as part of the Official Community Plan and Land Use Bylaw Targeted Review project. There are several properties on Denman Island with co-operative land ownership that have existed for many years, and that have a legally non-conforming number of dwellings. Multiple dwellings may have been permitted on their property at the time of construction, but subsequent bylaws have limited the number of dwellings so that they no longer conform to the current bylaw.

Section 4.1(xiii) of the Islands Trust Policy Manual permits a local trust committee to initiate and sponsor a development application "Where a local trust committee has made an error (e.g. as part of a bylaw consolidation) in assigning an appropriate designation or land use regulation to a specific property and moves to correct the error." In this case the changing of the number of dwellings permitted on a lot without recognizing the historic densities of existing dwellings in the bylaw is considered an error of the local trust committee and should owners of these co-operatives wish to apply for rezoning, the application can be sponsored by the LTC and the fee waived.

Although the LTC wishes to sponsor the application for rezoning of these historic co-operatives, the owners of the co-operatives themselves must make application to the LTC. The purpose of this staff report is to present the background, process and timeline for the project so that it can be advertised to the community. Once applications are received, subsequent staff reports will provide a detailed planning analysis for each property.

2. CURRENT PLANNING STATUS OF SUBJECT LANDS:

Four properties have been identified as legally non-conforming co-operatives that may qualify for this LTC sponsored rezoning. There could be others that we are not aware of and they are encouraged to contact Islands Trust staff to determine if they would also qualify.

Table 1: Properties that may be eligible for rezoning

Location	Legal Description	Lot size	Current Zoning
2550 Lake Rd	The west ½ of the SE ¼ of section 27, except parcels A and B and except part in plan VIP68873	41.6 acres (16.8 hectares)	A
3640 Lake Rd	The SE ¼ of Section 26	160 acres (64.8 hectares)	R2 and A
3843 Wren Rd	Parcel A (DD84520I) of the SE ¼ of Section 27	19.5 acres (7.9 hectares)	R2 and A
1795 Swan Rd	Lot A, Section 16 and 23, Plan 23870	50.7 acres (20.5 hectares)	A

2.1 Islands Trust Policy Statement:

The Islands Trust Policy Statement does not specifically address a rezoning to bring legally non-conforming properties into conformity. Each individual application will be considered with respect to the Islands Trust Policy Statement in a subsequent staff report or reports.

2.2 Denman Island Official Community Plan Bylaw No. 185, 2009

The Official Community Plan (OCP) may require amendment to bring these historic co-operatives into conformity. Further analysis will be given when individual applications are received.

Section E.1, Policy 29 states that:

The Local Trust Committee should consider zoning amendment applications to bring into conformity legal non-conforming dwelling units that were in existence and were deemed to be legal non-conforming on the date of adoption of this Plan provided that the applicant provides written proof, to the satisfaction of the Denman Island Local Trust Committee, that the dwelling units were constructed prior to the date of adoption of this Plan in accordance with the land use bylaw in effect at the time of construction.

2.3 Land Use / Zoning Bylaw

As a starting point to assist property owners in preparing their application and staff who will have to assess each application, below is a summary of bylaw changes regarding permitted density of dwellings, followed by a more detailed listing of each bylaw.

Table 2: Summary of bylaw changes regarding permitted density of dwellings

Pre-1972	No regulation existed for the number of dwellings per lot.
1972	One dwelling per 5 acres (2 hectares) was permitted with no maximum number of dwellings per lot.
1976	The minimum area per dwelling was raised to 10 acres (4 hectares) with a maximum of 5 dwellings per lot. In addition, one guest dwelling of up to 400 square feet was permitted on lots of 2 acres (0.8 hectares) or larger.

1984	The maximum number of dwellings per parcel was removed.
1990	Additional zones were created: the Residential zone allowed only one dwelling per lot, the minimum lot area per dwelling in the Rural Residential zone remained at 10 acres (4 hectares) and the minimum lot area per dwelling in the Rural Resource zone was raised to 37 acres (15 hectares). There was still no maximum number of dwellings per lot. Guest dwellings were no longer permitted.
1992	Multiple dwellings were permitted in the Residential zone at one dwelling per hectare (2.47 acres) to a maximum of 5 dwellings per lot.
2002	The Resource Residential zone was removed and Agriculture (A), Forestry (F) and Resource (RE) zones were created. The maximum number of single family dwelling units per lot in all of these zones was set at 1 (one).
2009	Number of dwellings permitted in the Agriculture (A) zone changed from 1 per lot to 1 per 15 hectares.

1972: Regional District of Comox-Strathcona Bylaw No. 89 “Denman Island Zoning By-law, 1972”

Most of Denman Island was zoned Rural with the exception of small areas zoned Commercial and Industrial.

Part 601 – Permitted in the Rural zone are:

- (2) One or two family residential buildings where no more than one (1) or two family residential building is provided for each five (5) acres of lot area.*

1976: Amendment By-law No. 193 (Comox-Strathcona Regional District):

Part 6, section 601(2) is repealed and replaced with:

- (2) One only guest dwelling up to 400 square feet of floor area, where the lot area is two (2) acres or more.*

Part 6, section 601 is amended by adding the following clause (3):

- (3) where a lot exceeds 10 acres in area, one additional single family dwelling shall be permitted for each 10 acres of lot area thereafter, up to a maximum of 5 single family dwelling units per lot and provided that such dwellings shall not be sited so as to prohibit future subdivision.*

1979: Amendment By-law No. 8 (Denman Island Trust Committee):

Part 6, section 601 is amended by adding a subsection (4) as follows:

- (4) Where a lot is within Subdivision District ‘A’ under “Denman Island Subdivision Control By-law, 1972” as amended and such lot exceeds 10 ha in area, one additional single family dwelling shall be permitted for each 10 ha of lot area thereafter, up to a maximum of five (5) single family dwelling units per lot and provided that such dwellings shall not be sited so as to prohibit future subdivision.*

Part 6, Section 601(3) is amended by adding after the last word in the sub-section the words "subject to Section 601(4)".

Note: All four of the properties identified as historic co-operatives that may be eligible for this rezoning were within Subdivision District 'A' under Denman Island Subdivision Control By-law, 1972.

1984: Denman Island Trust Committee Zoning By-law No. 24, 1984:

In the R zone (Rural):

Section 30(a) The following uses and no others are permitted in an R Zone:

- ii) one guest dwelling auxiliary to a principal dwelling where the parcel area exceeds 0.8 hectares (2 acres);*
- iii) on a parcel having an area exceeding 1 hectare (2.47 acres) and located within Subdivision District "C" defined under Denman Island Subdivision Control Bylaw, 1972, one additional single family dwelling for each additional 1 hectares (2.47 acres) of parcel area.*
- iv) on a parcel having an area exceeding 4 hectares (9.88 acres) and located within Subdivision District "B" defined under Denman Island Subdivision Control By-law, 1972, one additional single family dwelling for each additional 4 hectares (9.88 acres) of parcel area.*
- v) on a parcel having an area exceeding 10 hectares (24.7 acres) and located within Subdivision District "A" defined under Denman Island Subdivision Control By-law, 1972, one additional single family dwelling for each 10 hectares (24.7 acres) of parcel area*

1990: Denman Island Land Use Bylaw No. 40, 1989

Repealed the "Denman Island Zoning Bylaw No. 24, 1984" and the Denman Island Subdivision Control Bylaw, 1972".

Accessory cottages were no longer allowed.

Created new zones with the following permitted densities:

Residential: one dwelling unit per lot

Rural Residential: one dwelling unit per lot plus one dwelling unit for each additional 4 hectares of lot area

Rural Resource: one dwelling unit per lot plus one dwelling unit for each additional 15 hectares of lot area

1992: Denman Island Land Use Bylaw No. 65, 1992

Repealed the "Denman Island Land Use Bylaw No. 40, 1989.

Contained the following zoning regulations pertaining to density:

Residential: one dwelling unit per parcel of one hectare or less in area plus one dwelling unit for each additional one hectare of parcel area up to a total of 5 dwelling units per parcel

Rural Residential: unchanged from Bylaw no. 40 but clarified that one dwelling unit is permitted on lots of 4 hectares or less.

Rural Resource: unchanged from Bylaw no. 40 but clarified that one dwelling unit is permitted on lots of 15 hectares or less.

2002: Denman Island Land Use Bylaw No. 148, 2002

Repealed the “Denman Island Land Use Bylaw No. 65, 1992

Contained the following zoning regulations pertaining to density:

Residential: unchanged from Bylaw No. 65

Rural Residential: unchanged from Bylaw No. 65

The Resource Residential zone was removed, and Agriculture (A), Forestry (F) and Resource (RE) zones were created. The maximum number of single family dwelling units per lot was set at 1 (one).

2009: Denman Island Land Use Bylaw No. 186

Repealed the “Denman Island Land Use Bylaw No. 148, 2002”

Changed the number of dwellings permitted in the Agriculture (A) zone from 1 per lot to 1 per 15 hectares

2.4 Legally Non-Conforming Status – Section 911 of the *Local Government Act*

Section 911 of the *Local Government Act* should be read in its entirety, but copied below are excerpts thought to be particularly relevant to the application of historic co-operatives. In summary, the following points are made:

- In order to have legally non-conforming status, the use cannot be discontinued for a period of 6 months in a row. However, normal seasonal practices that would cause the use to be discontinued for more than 6 months are acceptable.
- A structural alteration or addition is not permitted except as allowed by a board of variance.
- A change of owners or tenants does not affect the legally non-conforming status.

Excerpts from section 911 of the Local Government Act:

*(1) If, at the time a bylaw under this Division is adopted,
(a) land, or a building or other structure, is lawfully used, and
(b) the use does not conform to the bylaw,*

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the bylaw.

(2) The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including

- (a) seasonal, market or production cycles,*
- (b) the control of disease or pests, or*

(c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(5) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 901(2), must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.

(7) For the purposes of this section, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.

3. TIMELINE AND PROCESS:

This project is part of a larger “Official Community Plan / Land Use Bylaw Targeted Review” that is planned for completion by adoption of bylaw amendments by the fall of 2011. In order to allow time for property owners to prepare their applications, and time for staff analysis and the rest of the bylaw amendment process, advertisement to the community should begin as soon as possible. Below is a suggested timeline for the project that correlates with the draft timeline in the staff report dated April 1, 2009 for the OCP/LUB targeted review:

July, 2009	Advertisement to community
November, 2009	Deadline for receipt of applications
March, 2010	First staff report or reports to LTC
Summer 2010	Prepare draft bylaws
Winter 2010/11	First reading and agency referrals
Spring 2011	Second reading, public hearing, third reading, forward to EC
Fall 2011	Final adoption

4. ISSUES SUMMARY

- a) Onus of proof
- b) Qualifying properties
- c) Method of advertising

6. STAFF COMMENTS:

- a) **Onus of Proof:** The applicants will be required to prove that the dwelling or dwellings they believe to be legally non-conforming existed at the relevant date when they were permitted, and that their use has not been discontinued for a continuous period of more than 6 months or was used seasonally. The evidence of previous and current owners of the property can normally be relied on, as can the evidence of neighbours.
- b) **Qualifying properties:** Staff is unclear whether the four properties identified as historic co-operatives with legally non-conforming dwellings are the only ones that should be considered, or if there may be others we are not aware of. This will have an impact on the method of advertising.

- c) **Method of advertising:** In order to make owners of relevant properties aware of this opportunity, advertisement should go to the community. This could be a targeted mail-out to the owners of the four properties believed to qualify for this LTC sponsored rezoning, and/or could include advertisement in the newspaper, or other methods as the LTC wishes. Advertisement will include a staff contact, and staff will be available to assist applicants to ensure their application is complete.

7. SUMMARY OF OPTIONS:

At this point the LTC is asked to determine the desired method of advertising, and direct staff to prepare and post / mail advertisements.

RECOMMENDATIONS:

Based on the above considerations, Staff recommends that the Denman Island Local Trust Committee:

1. Instruct staff to advertise in the local newspaper the opportunity for historic co-operatives with legally non-conforming dwellings to apply for Local Trust Committee sponsored rezoning; and,
2. Instruct staff to conduct a mail-out to the property owners of the four historic co-operatives identified as having legally non-conforming dwellings.

Respectfully submitted by:



Courtney Campbell, Island Planner

June 5, 2009

Date of signature

Concurred in by:

Chris Jackson

June 4, 2009

Acting Regional Planning Manager

Date of signature